85-166

No. _____

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IN THE

Supreme Court of the United States

October Term, 1985

AMERICAN STEAMSHIP COMPANY,
Petitioner,

vs.

MUNASSAR ALI OBAD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

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Question Presented for Review

Is a Defendant's verdict in an FELA/Jones Act case entitled to the same strict standard of review by the State Courts of Michigan considering motions for a new trial as is enjoyed by Plaintiffs in the same situation?

This Court has never spoken to the question of whether a Defendant's verdict in an FELA/Jones Act case enjoys the same immunity from judicial reappraisal of the evidence as does a Plaintiff's verdict. The question is particularly critical where, as here, there has been a re-examination of evidence submitted to a jury pursuant to unchallenged instructions in the face of contrary rulings by this Court and the Seventh Amendment to the Constitution of the United States.

List of All Parties

—MUNASSAR ALI OBAD—
Plaintiff/Respondent

—AMERICAN STEAMSHIP COMPANY—
Defendant/Petitioner

Designation of Corporate Relationships

AMERICAN STEAMSHIP COMPANY is a corporation and was organized under the laws of the State of New York in 1966. It was on May 26, 1975, a wholly-owned subsidiary of GATX CORP., a corporation organized under the laws of the State of New York in 1916.

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AMERICAN STEAMSHIP COMPANY,
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MUNASSAR ALI OBAD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

Opinion Below

The Opinion of the State of Michigan Court of Appeals, dated August 8, 1984, is unreported. It is reprinted in the Appendix to this Petition at pages 1a-14a.

Jurisdiction

Following affirmance of the grant of a new trial by the Michigan Court of Appeals, Petitioner sought leave to appeal to the Supreme Court of Michigan. Leave to appeal was denied by Order dated May 15, 1985. The

Order is reprinted in the Appendix to this Petition at pages 15a-16a. This Petition for Writ of Certiorari is filed within ninety (90) days of that date.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(3).

Constitutional and Statutory Provisions Involved

Article III, Section 2 and the Seventh Amendment to the Constitution of the United States are reprinted in the Appendix at pages 25a and 26a.

The Federal Employers' Liability Act, 45 U.S.C. §51 is reprinted in the Appendix at page 27a.

The Jones Act, 46 U.S.C. §688 is reprinted in the Appendix at page 28a.

Statement of the Case

Respondent MUNASSAR ALI OBAD was a seaman and member of the crew of the Str. JOHN J. BOLAND, a large, self-unloading Great Lakes freighter owned and operated by the Petitioner AMERICAN STEAMSHIP COMPANY. Respondent's duties as a crewman required him to enter the cargo holds of the BOLAND when cargo, in this instance coal, no longer flowed down the side slopes of the holds by gravity, through gates at the bottom of the holds onto conveyor belts in a tunnel beneath the holds.

On May 26, 1975, some coal had accumulated and stuck high on the slope in the corner of one of the cargo holds of the Str. JOHN J. BOLAND. Respondent attempted to dislodge it while standing on the slope below the coal and kicking at it with his feet. He was injured when the coal suddenly broke loose and carried him through a cargo hold gate onto the belt in the tunnel of the vessel.

Respondent was not wearing a safety belt or harness at the time of his accident, albeit that such equipment was readily available and Petitioner's regulations required the use of such safety belts and harnesses by crewmen working cargo holds. Furthermore, Respondent had been warned never to stand below stuck cargo and instructed to dislodge stuck cargo by working from the side.

A jury returned a verdict finding neither negligence nor unseaworthiness on the part of the Petitioner AMERICAN STEAMSHIP COMPANY and further finding that Respondent OBAD had been 100% contributorily negligent.[1] A copy of the questionnaire to jurors is reprinted in the Appendix at page 22a.

Before commencement of trial, the trial judge (HON. CHARLES J. KAUFMAN) announced that, while he would apply Michigan Procedural Rules, he would abide by federal substantive law. At the conclusion of evidence, the trial judge denied Plaintiff's motion for a directed verdict and the case went to the jury on standard Jones Act instructions. There were no exceptions to the charge.

Respondent moved for a new trial on the ground that the verdict was not supported by the evidence. The trial judge ruled that the jury "should have found that there was some negligence on the part of the Defendant as a matter of law" (bench remarks of September 21, 1980 reprinted in the Appendix at page 19a). Petitioner then unsuccessfully moved for reargument of the motion. The "Standard of Review" first became evident in JUDGE KAUFMAN's bench remarks on November 21, 1980 (reprinted in the Appendix at page 21a).

[1] The jury finding as to seaworthiness was not challenged and was not considered by the trial judge in ordering a new trial.

Petitioner sought leave to appeal to the Michigan Court of Appeals on the grounds that the action of the trial court was clearly erroneous and tainted by consideration of Michigan Law. Failing in the Court of Appeals, Petitioner unsuccessfully sought emergency leave to the Supreme Court of Michigan on the grounds that the trial judge had applied the wrong standard of review, specifically stating that the application "involves legal principles of major significance to * * * the Federal Maritime Law * * *.

On appeal as of right following a second trial,[2] the Court of Appeals acknowledged Petitioner's position that "a new trial should not be granted if there is any evidence to support [the verdict]" but held that the trial court properly applied the "great weight of the evidence" standard (Appendix, page 5a). The Supreme Court of Michigan, with one judge dissenting, denied leave to appeal, saying that it was "not persuaded that the questions presented should be reviewed by [it]" (Appendix, page 15a).

Petitioner seeks review of the rulings of the Michigan Courts for the following reasons:

1. To resolve the unanswered question of whether a Defendant's verdict in an FELA/Jones Act case enjoys the same immunity from judicial reappraisal of the evidence as does a Plaintiff's verdict.

2. To examine the propriety of re-examination by both the trial court and Appellate Court of evidence submitted to a jury pursuant to unchallenged

[2] A second trial resulted in a jury verdict for Respondent based on an allocation of negligence to both parties.

instructions in the face of contrary rulings by this Court and the Seventh Amendment to the Constitution of the United States.

3. To resolve a conflict in rulings among the several state courts of last resort with respect to the applicable standards on motions for a new trial in FELA/Jones Act cases.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. This Court has clearly established a rule that a trial court is not free to reweigh the evidence and set aside a Plaintiff's jury verdict in an FELA/Jones Act case if there is any evidence to support the verdict upon which reasonable minds might differ. *Tenant v. Peoria & P.U. R. Co.*, 321 U.S. 29, 64 S.Ct. 409, 88 L.Ed. 520 (1944); *Lavender v. Kurn*, 327 U.S. 645, 66 S.Ct. 740, 90 L.Ed. 916 (1946); *Rogers v. Missouri-Pacific R. Co.*, 352 U.S. 500, 77 S.Ct. 443, 1 L.Ed.2d 493 (1957); *Gallick v. Baltimore & Ohio R. Co.*, 372 U.S. 108, 83 S.Ct. 659, 9 L.Ed.2d 618 (1963). Unfortunately, this Court has not specifically addressed the converse of the strict standard applicable to Plaintiff's verdict—namely, whether a trial court is free to review and reweigh the evidence on a motion for a new trial by an unsuccessful Plaintiff.

The problem of whether the strict FELA standard should apply where a verdict has been in favor of a Defendant and against a Plaintiff seaman, has been recognized and discussed, but not decided by the Fifth Circuit. *Allen v. Seacoast Products, Inc.*, 623 F.2d 355, 360 (5th Cir., 1980); *Fontenot v. Teledyne Movible Offshore, Inc.*, 714 F.2d 17 (5th Cir., 1983); *Thezan v. Maritime Overseas Corp.*, 708 F.2d 175 (5th Cir., 1983), cert. den. 104 S.Ct. 729; *Thornton v. Gulf Fleet Marine Corporation, Inc.*, 752 F.2d 1074 (5th Cir., 1985).

No other Circuit has discussed the problem.

It is important for the maritime and railroad communities to know whether defense verdicts are entitled to the same protection from judicial interference as are Plaintiffs' verdicts. To deny this writ would leave confusion in the industry and lend credence to the belief that steamship companies and railroads can find no protection in the jury system.

The abstractions of this Court's rulings in *Tenant, Lavender, Rogers* and *Gallick,* in the light of the fundamental concept of equality for Plaintiffs and Defendants, strongly indicate that the strict standard of review should apply equally to Plaintiffs' and Defendants' verdicts.

The question of whether a Defendant could ever win a FELA/Jones Act case was tangentially argued to this Court in *Wilkerson v. McCarthy,* 336 U.S. 53, 93 L.Ed. 497, 69 S.Ct. 413 (1948). In *Wilkerson,* the petitioning employee sought review of affirmance by the State Courts of Utah of a directed verdict in favor of the Defendant railroad. Counsel for the railroad resisted the Petition, arguing in this Court that a Defendant could never win where the issue of negligence is left to the jury (336 U.S. at 62). In reversing the Courts of Utah, this Court acknowledged:

> "Many arguments . . . could have been presented to the jury in an effort to persuade it that the railroad's conduct was not negligent"

but held that the arguments were:

> "relevant and appropriate only for the consideration by the jury, the tribunal selected to pass on the issues." (336 U.S. at 63-64)

It is, therefore, a fair reading of the *Wilkerson* opinion that should the jury accept such arguments and bring in a verdict for the Defendant, such verdict would be entitled to the same strict standard of review as would be a Plaintiff's verdict.

The on-going problem and need for resolution was most recently discussed by the Fifth Circuit in *Thornton v. Gulf Fleet Marine Corporation, Inc.*, 752 F.2d 1074 (5th Cir., 1985) where the Court said:

> "It is also well established that in the instance of a jury verdict under the Jones Act finding negligence on the part of the Defendant and in favor of Plaintiff seaman, a Defendant's motion for directed verdict or jnov falls under a much stricter standard, the standard applied in Federal Employers' Liability Act cases. Taking such a jury verdict away from the Plaintiff seaman is appropriate '(o)nly when there is a complete absence of probative facts to support the verdict . . .' *Lavender v. Kurn*, 327 U.S. 645, 652, 66 S.Ct. 740, 743, 90 L.Ed. 916 (1946) (FELA case). *Alverez v. J. Ray McDermott & Co.*, 674 F.2d 1037, 1042 (5th Cir., 1982).
>
> This latter standard has been stated in many cases and such statements have lacked a caveat covering the situation where the jury verdict is in favor of the Defendant in a Jones Act negligence case, and the Plaintiff seeks a directed verdict or a jnov. The question whether the same standard requiring only a scintilla of evidence to block a directed verdict or jnov is applicable when the Defendant prevails before the jury has not been authoritatively decided in this Circuit. * * *"

The Fifth Circuit cases were all decided on unseaworthiness questions, leaving the negligence question unresolved. Respondent OBAD did not move against the jury's finding that the Str. JOHN J. BOLAND was seaworthy. Thus, the question of strict

standard of review of a jury finding absolving a Defendant of negligence is clearly preserved in this case.

Respondent did not really address the question of whether there were differing standards applicable to Plaintiffs and Defendants in the Courts below, but argued that the strict standard of review was applicable only to directed verdicts or jnov's. A moment's reflection, however, renders a distinction between directed verdicts and motions for a new trial untenable, since a trial judge feeling that a Plaintiff was entitled to an award, could simply continue to grant motions for a new trial until the desired result was attained. Such a semantical distinction is clearly not in the interest of either judicial economy or equal justice.

The Anglo-American system of justice requires that Defendant corporations receive the same consideration as indigent Plaintiffs from a jury. National policy decisions relating to the welfare of railroad employees and seamen may well be a proper subject for Congress. The economic inequity between Plaintiffs and corporate Defendants should not, however, be a factor in this Court and Petitioner therefore seeks reversal of the rulings of the Court of Michigan and reinstatement of its verdict at the hands of the jury.

2. The jury, viewing and hearing the witnesses and considering their testimony and fair inferences thereon, determined not only that the Defendant was not negligent, but Plaintiff's own contributory negligence was the sole cause of his accident. (The questionnaire returned by the jury is printed in the Appendix at page 22a. A synopsis of the evidence is printed in the Appendix at pages 23a-24a).

Judicial function in FELA/Jones Act cases was clearly defined by this Court in *Gallick v. Baltimore & Ohio R. Co.*, 372 U.S. 108, 83 S.Ct. 659, 9 L.Ed.2d 618 (1963):

> "But it is the duty of the courts to attempt to harmonize the answers, if it is possible under a fair reading of them: 'Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way.' *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 364, 7 L.Ed.2d 798, 807, 82 S.Ct. 1134. We therefore must attempt to reconcile the jury's findings, by exegesis if necessary, as in *Arnold v. Panhandle & S. F. R. Co.*, 353 U.S. 360, 1 L.Ed.2d 889, 77 S.Ct. 840; *McVey v. Phillips Petroleum Co.*, 288 F.2d 53 (CA, 5th Cir.); *Morris v. Pennsylvania R. Co.*, 187 F.2d 837 (CA, 2d Cir.) (collecting authorities), before we are free to disregard the jury's special verdict and remand the case for a new trial." (372 U.S. at 119).

The Court had previously said in *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 7 L.Ed.2d 798, 82 S.Ct. 1134 (1962):

> "Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way. For a search for one possible view of the case which will make the jury's finding inconsistent results in a collision with the Seventh Amendment." (369 U.S. 364)

Lower federal courts have applied the strict standard of review to findings of contributory negligence.

The Second Circuit said in *Fleming v. American Export Isbrandtsen Lines* (2d Cir., 1971) 451 F.2d 1329:

> "The standard for determining whether Plaintiff has presented sufficient evidence to raise a jury question as to Defendant's negligence is whether,

> viewing the evidence in the record in the light most favorable to Plaintiff, 'there is a complete absence of probative facts to support the conclusion reached' by the jury. * * * (citations omitted). * * * *The same test applies in determining the sufficiency of the evidence as to a Plaintiff-seaman's contributory negligence.*" (emphasis ours)

The Fifth Circuit concurs. *Alverez v. J. Ray McDermott & Co., Inc.* (5th Cir., 1982) 674 F.2d 1037, 1042, 1043.

The Courts of Michigan have not only shown no effort to reconcile the jury's finding that Petitioner was not negligent with their finding that Respondent's own negligence was the sole cause of his accident, but have searched the record and raised legal issues not preserved by motion or exception to support their subjective evaluation of the evidence and inferences to be drawn therefrom.

Trial Judge KAUFMAN's subjective appraisal of the evidence is manifest in his bench remarks of September 19, 1980, when he said:

> "it appears to me as a matter of law there was some negligence on the part of the defendant" (Appendix, page 19a).

On rehearing, the invasion of the province of the jury was even more evident when he said:

> ". . . The big issue, as I see it, and I think I saw it at the time the Motion was originally made for the new trial and I clearly see it now, is regarding the harnesses. Whether they are available is one thing. Where they are actually furnished is another thing. The testimony was that they were there. There was a dispute as to whether or not they were locked up or whether or not they were a little more available to the men working. Testimony was that they were not

> furnished and I think Mr. Obad testified to the fact that one was never really offered to him, which isn't important.
>
> What is important, I think, is that Michigan is very strong in holding that a failure to provide safety equipment is such a heinous thing in the realm of tort liability that Michigan even holds that you can't use Comparative Negligence where there is a failure to provide safety equipment. It is just almost absolute liability. I am not going to go that far in a case brought under the Federal Act, but it appeared to me clearly then and now that the decision of the jury was against the great weight of the evidence in regard to the negligence of the defendant." (Appendix p. 21).

The opinion of the Michigan Court of Appeals clearly shows that a search of the record, not only of the first trial, but also of the second trial, was conducted to support its affirmance of the trial judge's grant of a new trial.

On at least two occasions involving Plaintiffs' verdicts, this Court summarily granted a Petition for Certiorari and reversed similar actions by state courts. *Deen v. Gulf C. & S. F. R. Co.*, 358 U.S. 874, 1958; on rehearing, *Deen v. Hickman*, 358 U.S. 57, 79 S.Ct. 1, 3 L.Ed.2d 28, 1958; *Harsh v. Illinois Terminal R. Co.*, 348 U.S. 940, 1955. Indeed in this past term, this Court, in a slightly different context, found it necessary to remind the Courts of Missouri of the supremacy of federal rules in FELA/Jones Act cases. *St. Louis & S. W. Ry. Co. v. Dickerson*, 470 U.S. 106, 84 L.Ed.2d 303 (1985, No. 84-914).

This Petition raises the question of whether the prohibition against a search of the record and re-evaluation of the evidence applies only to Plaintiffs'

verdicts. Petitioner accordingly further seeks review by this Court of the intrusion upon the functions of the jury in a FELA/Jones Act case by the Courts of Michigan.

3. In Michigan, pursuant to the rulings in this case, an injured seaman may take his case to the jury with full confidence that if he fails to convince the jury of shipowner negligence (and his own freedom from negligence) he may still look forward to the possibility that the trial judge may have evaluated the witnesses and evidence differently, thus giving him a chance to argue his case to a second jury.

In Texas and Illinois, at least, an injured railroad worker or a seaman enjoys no such advantage.

In *Texas & Pacific Ry. Co. v. Roberts* (Texas) 481 S.W.2d 798 (1972), a Defendant's verdict had been set aside and a new trial ordered on the grounds that the verdict was against the weight of the evidence. Stating with reference to *Lavender*, "Once the Appellate Court determines that the verdict is supported by some evidence about which reasonable minds could differ, the Appellate Court's function is exhausted" (pg. 800), the Texas Court went on to say at pg. 800:

> "Review by an appellate court * * * under Texas 'weight and preponderance' standard is precluded where liability of the employer is found by the jury; it *is also precluded where the verdict exonerates the employer* from liability. *Harsh v. Illinois Terminal R. Co.*, 348 U.S. 940, 75 S.Ct. 362, 99 L.Ed. 736 (1954); *Deen v. Hickman*, 358 U.S. 57, 79 S.Ct. 1, 3 L.Ed.2d 28 (1958)."

In *Meyer v. Penn Central Transp. Co.*, 397 N.E.2d 163; 33 Ill. Dec. 727 (1979), a trial court had granted Plaintiff's motion for a new trial limited to the issue of damages. After reviewing conflicting evidence in the

case, and noting that the issue (of pain and suffering) 'often turns upon whether the jury believes the Plaintiff', the Court said at pg. 66 of 397 N.E.2d:

> "* * * We acknowledge the Supreme Court's admonition that in FELA cases 'courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable.' (*Tenant v. Peoria & Pekin Union Ry. Co.*, (1944), 321 U.S. 29, 35, 64 S.Ct. 409, 412, 88 L.Ed. 520, 525). Given these guidelines, our duty is not to decide this case anew, but rather to determine whether there is sufficient evidence to support the jury's verdict. If there was sufficient evidence, then the trial court erred in granting a new trial."

Allowed to stand, this case will invite Plaintiffs to file suit in Michigan instead of some state following the holdings of Texas in *Texas & Pacific Ry. Co. v. Roberts* and Illinois in *Meyer v. Penn Central Transportation Co.* It will further invite judge-shopping for a jurist known to have sympathetic views to injured railway employees and seamen.

What constitutes negligence under the statute is a federal question. *Urie v. Thompson*, 337 U.S. 163, 174, 69 S.Ct. 1018, 93 L.Ed. 1282 (1949).

In *Brady v. Southern Railway Co.*, 320 U.S. 476, 479, 64 S.Ct. 232, 88 L.Ed. 239 (1943), this Court said with reference to an FELA case:

> "Only by a uniform federal rule as to the necessary amount of evidence may litigants under the Federal Act receive similar treatment in all states . . ."

Michigan, Texas and Illinois do not agree on whether the strict standard of review applies to Defendants' verdicts in FELA/Jones Act cases. *Prima facie,* therefore, there is no uniformity.

This Court should not encourage forum and judge-shopping and more importantly, should clearly establish the law as to whether a strict standard of review of a jury's verdict applies equally to Plaintiffs and Defendants.

Conclusion

For the reasons set forth herein and because the Courts of Michigan have failed to follow established strict standards of review of a Defendant's verdict on Plaintiff's motion for a new trial and to discourage forum shopping among railroad employees and merchant seamen, Petitioner prays that a Writ of Certiorari issue to review the Order of the Supreme Court of Michigan entered herein on May 15, 1985.

Respectfully submitted,

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APPENDIX

Opinion of the Michigan Court of Appeals (August 8, 1984)

STATE OF MICHIGAN
COURT OF APPEALS

AUG 08 1984
No. 61703

MUNASSAR A. OBAD,
Plaintiff-Appellee,
Cross-Appellant,

vs.

AMERICAN STEAMSHIP COMPANY,
Defendant-Appellant,
Cross-Appellee.

BEFORE: Beasley, *P.J.*; R.S. Gribbs and J.R. Ernst,* *JJ.*

PER CURIAM

Plaintiff, Munassar A. Obad, brought suit on July 22, 1975, under the Jones Act[1] for injuries sustained in the course of his employment as a deckhand on a freighter owned by defendant, American Steamship Company. He alleged that the vessel was unseaworthy and that defendant was negligent in not providing a reasonably safe place to work. Defendant responded that plaintiff's injuries were entirely the result of his own negligence. Following a jury trial, judgment was entered on the verdict of no cause of action on July 31, 1979.

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* Circuit Judge, sitting on Court of Appeals by assignment.

Appendix—Opinion of the Michigan Court of Appeals (August 8, 1984)

On September 19, 1980, the trial court granted a new trial on the negligence claim, finding the verdict was against the great weight of the evidence. Defendant's application for leave to appeal was denied by both this court and the Supreme Court.

At the second trial, the jury found defendant was negligent and awarded plaintiff $243,000 in damages, after subtracting 30% for plaintiff's negligence. Defendant's motion for new trial or remittitur was denied December 2, 1981, and defendant appeals by right. Plaintiff cross-appeals from the trial court's denial of pre-judgment interest and denial of a motion to amend the judgment.

Plaintiff testified at the first trial that he was injured while carrying out orders to discharge coal from the No. 5 cargo hold of the SS John Boland. The vessel is a self-unloading freighter, meaning that cargo is carried in and out of its holds by means of conveyor belts. Plaintiff's task involved shoveling coal into a hopper and through a gate, so the coal would reach the conveyor belt. The floor of the hold was slanted at about a 30 degree angle. There were chains hanging in the hold for deckhands to grasp while they worked. A safety belt or harness could be attached to the end of the chain. Plaintiff testified the belts were never used while unloading coal, because they slowed the work, and he claimed he had seen a deckhand refused permission to use a belt on one occasion.

Plaintiff testified that when he noticed some coal stuck in a corner, he asked Marvin Ditzel, the bosun's mate, for permission to use a hose to dislodge the coal. Ditzel refused, saying he "had the order" not to use water.

Plaintiff began hitting at the coal with a chain and kicking at it. The coal came loose and knocked plaintiff off his feet. He remembered nothing else prior to being in the hospital.

Plaintiff claimed he experienced severe headaches and had constant pain in the back and neck. He underwent surgery for a right shoulder separation, during which a screw was implanted in his shoulder. He said he was still unable to work.

The captain of the SS John Boland, Wilbur Buswell, testified that the deckhands were told "time and time again" to wear a safety belt in the cargo holds. The men had several tools available so they could move the coal, including a sledgehammer, shovel and "hoe". Buswell testified that they knew they were "not supposed to get close to the pile", and that plaintiff "should have had his safety belt on".

The ship held safety meetings, but plaintiff testified he did not attend. On cross-examination, he denied being told not to stand below coal jams, even though he had admitted the same in a deposition. Ditzel testified that he recalled telling the deckhands, including plaintiff, to "never stand underneath the cargo when you are unloading." Regarding safety belts, Ditzel said "they were there to be used in case the men wanted them". The men were shown how to put the belts on, which were kept in the deck locker in a forward cabin.

Ditzel was on the deck observing plaintiff in the hold when the accident occurred. His job was to give instructions and to stand by with a safety switch, which would shut off the conveyor belt if a problem arose.

Ditzel observed plaintiff pull himself with a chain near to the coal pile. He tried to loosen it at the top, but lacking in success, proceeded to stand beneath it and kick it below. The cargo knocked plaintiff down, forcing the chain from his hand. Plaintiff "rode the top of it" through the gate to the conveyor belt tunnel.

On cross-examination, Ditzel stated plaintiff was standing beneath the coal pile for "about a minute" before the coal came loose. He stated plaintiff could not have heard any instructions he might have offered, because of noise from the conveyor, but admitted there would have been no such problem if he had turned the belt off. He told the men not to stand below the coal and testified, "then the man has the choice of his own whether he wants to take that risk".

The second mate was on shore at the time of the accident. In his absence, it was the responsibility of the bosun's mate to make sure men going into the hold were wearing safety belts.

A crucial aspect of the second trial, which distinguished it from the first, was the testimony of George Barbito, a deckhand who was working with plaintiff in the No. 5 cargo hold at the time of the accident. His testimony contradicted that of the defense witnesses in two important respects. First, Barbito stated he saw no safety belts in his two months on board the SS John Boland. Second, he testified deckhands were instructed to hold onto a chain and kick at the coal near the bottom in order to dislodge it. The record contains no explanation of plaintiff's failure to produce Barbito at the first trial.

Appendix—Opinion of the Michigan Court of Appeals (August 8, 1984)

Defendant first argues that the granting of a new trial was a flagrant abuse of discretion. Defendant and plaintiff disagree on the proper federal law standard governing the grant of a new trial in a Jones Act case. Defendant states that a new trial should not be granted if there is any evidence to support the jury's finding in favor of the non-moving party. Plaintiff counters that the proper standard is not the above directed verdict standard, but that federal law recognizes the trial court's authority to grant a new trial where the verdict is against the great weight of the evidence. According to plaintiff, this court's review is limited to whether the trial court abused its discretion.

The parties are correct in that federal law applies to the issue of whether the trial judge committed error by granting a new trial. In *King v. Nicholson Transit Co.*,[2] the court applied federal standards to determine whether the evidence was sufficient to support the jury verdict in a Jones Act case. Though "local rules of practice and procedure" apply to federal claims tried in state courts,[3] whether a plaintiff is entitled to a new trial is clearly a substantive matter.

The Federal Courts of Appeal hold that a grant of a new trial "is reviewable only for abuse of discretion".[4] Nevertheless, before a new trial may be granted because the verdict did not comport with the proofs offered at trial, the verdict must conflict with "the great weight, not merely the greater weight, of the evidence".[5] A new trial should not be ordered merely because the jury could have reasonably reached another conclusion.[6] "To further ensure against this danger, a stringent and searching

review of the record is undertaken on appeal."[7] That a second jury found in plaintiff's favor is of no significance, especially in light of the additional testimony presented on retrial.

In this case, the trial judge did not commit an abuse of discretion, as defined above. Rather, a consideration of factors unique to Jones Act claims, and the evidence at the first trial, necessitates our affirmance of his grant of a new trial.

The standard of liability under the Jones Act is the same as that under the Federal Employers' Liability Act.[8] Thus, even the slightest negligence on the part of the shipowner suffices for a finding of liability.[9] The seaman's duty to protect himself is slight, and he "has no duty to find the safest way to perform his work".[10] "Only where it is shown that there existed a safe alternative available of which he knew or should have known, can a seaman's choice of an unsafe course of action be properly considered in determining whether he was negligent."[11]

In the instant case, the bosun's mate stood above the cargo hold and observed plaintiff attempting to dislodge the coal in a dangerous manner. He did not advise plaintiff to move away from the coal jam, but waited until the accident was in progress to press the safety switch. Moreover, it appears that the wearing of safety belts in the hold was a matter left to the discretion of the individual deckhands. Working without a safety belt on was a method which plaintiff could have reasonably thought open to him.

In *Rogers v. Gracey-Hellums Corp.*,[12] the court found negligence on the employer's part in its "failing to instruct the plaintiff in the use of goggles and to adopt and enforce regulations to require their use". The goggles, like the safety belts in the present case, were available, but "there was no general policy requiring the use of goggles". The individual in charge testified he "might or not might insist" on the wearing of goggles.

In this case, the bosun's mate made no attempt to enforce the alleged rule requiring the use of safety belts. The second mate, Paul Schneider, testified that plaintiff should have been told not to work in the hold without a safety belt.

Accordingly, the trial court did not abuse its discretion by holding the jury's verdict against the great weight of the evidence. Uncontroverted evidence at the first trial showed that defendant was more than slightly negligent, and that this negligence played a substantial part in producing plaintiff's injuries.

The second argument made by defendant is that the trial court erred in quashing the notices of deposition for two Baltimore, Maryland, doctors, to whom plaintiff had been referred for examination and treatment, because of untimeliness. The court granted the motion to quash "because of the fact that it was done on the eve of trial", even though defendant knew about this way back years ago.

Defendant's notice of deposition was filed 11 months after plaintiff was granted a new trial. Defendant attributes the delay to their pursuit of appellate remedies. However, it is apparent that these witnesses

could have been deposed during that time or within the period immediately following the denial of leave to appeal.

Four medical experts were called by defendant at the second trial, who testified that plaintiff was not as badly hurt as he claimed. Therefore, this is not a case where a last-minute deposition was essential to a party's case.[13] Considering the above factors, we find no abuse of discretion in the court's granting of the motion to quash.[14]

Defendant next contends that the exclusion of opinion and diagnosis portions of medical records, compiled while plaintiff was treated in Baltimore, was error. We disagree. Those portions of the records were not admissible under MRE 803(6) as a business record exception to the hearsay rule.[15] Defendant's argument that MRE 106 provides an independent basis for admissibility lacks merit.[16]

Defendant's fourth argument is that plaintiff's closing summation was so inflammatory that it denied defendant a fair trial. At the conclusion of plaintiff's closing argument, defendant moved for mis-trial on the grounds that plaintiff's attorney had referred to inadmissible evidence, had suggested a "cover-up" by defendant, and had made "computations of inflationary wage rates". Defendant did not object, as on appeal, to any personal vouching for plaintiff's credibility, or to remarks concerning Dr. Green, or to plaintiff's accusation that the second mate had lied to the coast guard. Even though defendant did not object to every remark referred to on appeal, this court must consider the remarks in

light of the evidence presented at trial and the subsequent curative jury instructions to determine whether they were so improper as to require reversal.[17]

The statement that Dr. Green was "on the [defendant's] payroll" clearly referred to his retention by defendant to examine plaintiff and testify in the case. "Such comments are well within the bounds of propriety and supported by the evidence produced in court."[18]

Defendant contends plaintiff's attorney personally vouched for his client's credibility by stating, *inter alia*, that "this man has spoken the truth from day one, and the truth can knock off anything that doesn't go in line with it". We do not find reversible error in this remark, or in the accusations that the second mate lied to the coast guard and that the captain had been told what to say, which were arguable interpretations of the testimony.

In *Firchau v. Foster*,[19] the Supreme Court held that counsel may discuss the character of witnesses, the probability of the veracity of testimony and may characterize testimony as truth or falsehood.

Counsel's references to specific amounts of future wage losses were error.[20] However, the court's instruction to the jury that they were not permitted to award speculative damages cured this error. The court did not prevent consideration of inflationary trends, but correctly instructed the jury to reduce its award for future wages to "present value".

Counsel's improper allusions to the frequency of safety meetings and fire drills on the SS John Boland do not

constitute reversible error, as the trial judge issued a specific instruction to ignore those matters. Finally, while the allegations of a conspiracy or "cover-up" by defendant present a closer question, the mere dispatching of attorneys to the scene of the accident cannot be viewed as evidence of a cover-up.

Counsel also emphasized defendant's size and wealth and the disparity between plaintiff and defendant, which was clearly improper argument. However, the trial judge responded to defendant's motion for mis-trial by immediately issuing curative instructions to the jury, to the effect that the arguments of counsel are not evidence in the case, and that the jurors "should disregard anything said by an attorney which is not supported by evidence". In light of the immediacy of this instruction and the fact that counsel confined his remarks to the closing argument, we decline to find reversible error.[21]

Plaintiff contends that the court erred in refusing to correct an obvious computational error in the verdict. The jury found plaintiff was 30% negligent, yet the award they made of $243,000 reflects a reduction of exactly one-third, or 33⅓%. Plaintiff requests that this court either increase the award to conform with the 30% finding or remand for proceedings to correct the verdict. Under the circumstances of this case, however, we decline to do either. We, like the trial judge, are uncertain as to which amount the jury intended to award. Plaintiff does not request a new trial, the usual remedy for inconsistent verdicts.[22]

The proper remedy to correct a defective verdict is via further instruction and jury deliberation.[23] The court may

itself alter the verdict only if "the court can ascertain the intent of the jury and the court's final judgment implements that intent".[24] The trial court may reconvene the jury "for the sole purpose of determining if a clerical error was committed in the recording of the verdict".[25]

In this case, while the jury may have made a clerical error in its computation of plaintiff's award, the actual intent of the jurors is far from obvious. Plaintiff argues that the award should be increased to conform with the finding that he was negligent to the extent of 30%. Defendant contends that the possibility of a random error producing a damages figure equal to an exact one-third reduction in the total damages is rather remote. The trial judge was unsure of the jury's true intention. Plaintiff submitted three affidavits. Further investigation would necessarily invade the jurors' minds. Understandably, plaintiff does not wish to avail himself of the only available remedy under these circumstances, namely, a new trial. Therefore, relief must be denied entirely.

Furthermore, this case has already been twice tried before juries. Plaintiff was given the advantage of the doubt in being granted a second trial. Certainly, the history of this case points up the desirability of a federal maritime worker compensation law for resolution of these claims. We are not inclined to force another trial.

Plaintiff's final argument, that the trial court erred in denying pre-judgment interest on the jury's award pursuant to MCL 600.6013; MSA 27A.6013, lacks merit. Pre-judgment interest may not be awarded to a prevailing plaintiff in a Jones Act suit tried before a jury.[26] In *Shemman*,[27] this court rejected a claim identical to that raised here, finding the allowance of interest "a matter of Federal substantive law".

AFFIRMED.

/s/ WILLIAM R. BEASLEY
/s/ ROMAN S. GRIBBS
/s/ J. RICHARD ERNST

[1] 46 USC 688.

[2] 329 Mich 586, 593; 46 NW2d 389 (1951), *cert den* 342 US 886; 72 S Ct 176; 96 L ED 665 (1951). See also, *Jones v. New York Central R Co.*, 8 Mich App 575, 580; 155 NW2d 216 (1967).

[3] *Chesapeake & Ohio Railway Co. v. De Atley*, 241 US 310; 36 S Ct 564; 60 L Ed 1016 (1916).

[4] *Rabun v. Kimberly-Clark Corp.*, 678 F2d 1053, 1060 (CA 11, 1982).

[5] *J & H Auto Trim Co., Inc. v. Bellefonte Ins. Co.*, 677 F2d 1365, 1373 (CA 11, 1982).

[6] *Conway v. Chemical Leaman Tank Lines, Inc.*, 610 F2d 360, 367, fn 9 (CA 5, 1980).

[7] *Bellefonte Ins. Co., supra*, at p 1373.

[8] *Ferguson v. Moore-McCormack Lines, Inc.*, 352 US 521, 524; 77 S Ct 457, 459; 1 L Ed 2d 511, 514 (1957).

[9] *Id.; Rogers v. Missouri Pacific Railroad Co.*, 352 US 500; 77 S Ct 443; 1 L Ed 2d 493 (1957), *reh den* 353 US 943; 77 S Ct 808; 1 L Ed 2d 764 (1957); *Shemman v. American Steamship Co.*, 89 Mich App 656, 664; 280 NW2d 852 (1979).

[10] *Thezan v. Maritime Overseas Corp.*, 708 F2d 175, 180-181 (CA 5, 1983), *cert den* ____ US ____; 104 S Ct 729; 79 L Ed 2d 189 (1984).

[11] *Ceja v. Mike Hooks, Inc.*, 690 F2d 1191, 1195 (CA 5, 1982).

[12] 331 F Supp 1287, 1290 (E D La, 1970), *aff'd* 442 F2d 1196 (CA 5, 1971).

[13] *McCall Co. v. Jacobson*, 139 Mich 455, 459-460; 102 NW 969 (1905).

[14] *Masters v. Highland Park*, 97 Mich App 56, 61; 294 NW2d 246 (1980).

[15] *Jackson v. Depco Equipment Co.*, 115 Mich App 570, 580; 321 NW2d 736 (1982); *Rentz v. General Motors Co.*, 70 Mich App 249, 252; 245 NW2d 705 (1976).

[16] *Socony Vacuum Oil Co. v. Marvin*, 313 Mich 528, 540; 21 NW2d 841 (1946).

[17] *Reetz v. Kinsman Marine Transit Co.*, 416 Mich 97, 103; 330 NW2d 638 (1982); *People v. Robinson*, 386 Mich 551, 563; 194 NW2d 709 (1972).

[18] *Reetz, supra*, at pp 108-109.

[19] 371 Mich 75, 78; 123 NW2d 151 (1963); see also *Reetz, supra*, at p 109.

[20] *Morvant v. Construction Aggregates Corp.*, 570 F2d 626, 636 (CA 6, 1978), *cert dismd* 439 US 801; 99 S Ct 44; 58 L Ed 2d 94 (1978).

[21] *Anderson v. Harry's Army Surplus, Inc.*, 117 Mich App 601; 615; 324 NW2d 96 (1982); *Reetz, supra*, at pp 111-112.

[22] *Harrington v. Velat*, 395 Mich 359, 360; 235 NW2d 357 (1975).

[23] *Jackovich v. General Adjustment Bureau, Inc.*, 119 Mich App 221, 234-235; 326 NW2d 458 (1982); *Farm Bureau Mutual Ins. Co. v. Sears, Roebuck & Co.*, 99 Mich App 763, 769; 298 NW2d 634 (1980).

[24] *ARDCO v. CNA Financial Corp.*, 123 Mich App 162, 167-168; 333 NW2d 206 (1983).

[25] *Brillhart v. Mullins*, 128 Mich App 140; 339 NW2d 722 (1983).

[26] *Doucet v. Wheless Drilling Co.*, 467 F2d 336 (CA 5, 1972); *Cleveland Tankers, Inc. v. Tierney*, 169 F2d 622 (CA 6, 1948).

[27] *Shemman, supra*, at pp 676-677.

Order of the Supreme Court of Michigan
(May 15, 1985)

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN Held at the Supreme Court Room, in the City of Lansing, on the 15th day of May in the year of our Lord one thousand nine hundred and eighty-five.

Present the Honorable G. MENNEN WILLIAMS, *Chief Justice.* CHARLES L. LEVIN, JAMES L. RYAN, JAMES H. BRICKLEY, MICHAEL F. CAVANAGH, PATRICIA J. BOYLE, DOROTHY COMSTOCK RILEY, *Associate Justices.*

74914

MUNASSAR ALI OBAD,
Plaintiff-Appellee,

v.

AMERICAN STEAMSHIP COMPANY,
Defendant-Appellant.

SC: 74914
COA: 61703
LC: 75-074-605-NO

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Riley, J., would grant leave to appeal.

Appendix—Order of the Supreme Court of Michigan (May 15, 1985)

STATE OF MICHIGAN — ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing this 15th day of May in the year of our Lord one thousand nine hundred and eighty-five.

(Seal) CORBIN R. DAVIS
Clerk

Order of the Hon. Charles J. Kaufman
(September 19, 1980)

PRAECIPE FOR MOTION AND
ORDER/JUDGMENT

THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
STATE OF MICHIGAN

MUNASSAR OBAD,

Plaintiff,

v.

AMERICAN STEAMSHIP COMPANY,

Defendant.

Civil Action No. 75 074 605 NO
Criminal No._____

TO THE ASSIGNMENT CLERK: Please place Plaintiff's/Defendant's (strike one) Motion for (state nature of Motion in brief form)

MOTION FOR NEW TRIAL

On the motion calendar for (date) Friday, September 19, 1980 at 11:30 a.m.

This motion is to be heard by JUDGE KAUFMAN

TO COURT CLERK: Have the following Order/Judgment completed and signed by Judge and check 1 or 2 below, whichever is applicable.

Appendix--Order of the Hon. Charles J. Kaufman (September 19, 1980)

ORDER/JUDGMENT

Dated: September 19, 1980

[ ] 1. IT IS HEREBY ORDERED THAT the aforesaid motion be and the same is hereby DENIED.

[x] 2. IT IS HEREBY ORDERED THAT the aforesaid motion be and the same is hereby GRANTED, and it is FURTHER ORDERED AND ADJUDGED.

A True Copy
James R. Killeen
Clerk
By B Ware
Deputy Clerk

CHARLES KAUFMAN
Circuit Judge

Leonard C. Jaques (P 15450)
Plaintiff's Attorney
Telephone No. 961-1080

John Arthur Hamilton (P 14572)
Defendant's Attorney
Telephone No. 961-3234

Appendix—Order of the Hon. Charles J. Kaufman (September 19, 1980)

BENCH REMARKS
HON. CHARLES J. KAUFMAN
SEPT 19 1980

"THE COURT: In this case I am going to do something that I very, very rarely do. I won't say never, but very rarely. In this case it really appears to me as a matter of law that there was some negligence on the part of the defendant. Clearly I am satisfied there was negligence on the part of the plaintiff. But there is even law in Michigan, when talking about the failure to produce proper safety equipment, that there is not even a defense of contributory negligence.

Be that as it may, it was clear from the evidence that the defendant didn't provide the safety equipment that its own regulations required, that is, these harnesses, and it would appear to me that while I agreed with the Jury, probably that the damages were nowheres near what the plaintiff claimed they were, nevertheless, there was an accident, there was some injury, and the fact that the Jury didn't give some award to the plaintiff and reduce it by some substantial amount due to his negligence, clearly as a matter of law I am satisfied there was some negligence on the part of the defendant.

Based on that and probably that alone, I would grant the motion for—I would grant the new trial."

Order of the Hon. Charles J. Kaufman
(November 26, 1980)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

Case No. 75 074 605 NO

MUNASSAR A. OBAD,

Plaintiff,

vs.

AMERICAN STEAMSHIP COMPANY,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR RE-HEARING

At a session of said Court, held in the City-County Building, City of Detroit, County of Wayne, State of Michigan, on NOV 26 1980

PRESENT: HONORABLE CHARLES KAUFMAN,
Circuit Court Judge.

Defendant's Motion for Re-Hearing on the Order of the Court granting a new trial in the above cause having come on for hearing on November 21, 1980, and the Court having heard arguments of counsel,

IT IS HEREBY ORDERED that the Motion for Re-Hearing be denied.

CHARLES KAUFMAN
Circuit Court Judge

Appendix—Order of the Hon. Charles J. Kaufman (November 26, 1980)

BENCH REMARKS OF
JUDGE CHARLES J. KAUFMAN
NOV 21 1980

"THE COURT: Okay. Whatever I said in the prior ruling, I am sure that I will stand by. The question is this: Whether or not the Court granted a new trial based upon proper grounds. The big issue, as I see it, and I think I saw it at the time the Motion was originally made for the new trial and I clearly see it now, is regarding the harnesses. Whether they are available is one thing. Where they are actually furnished is another thing. The testimony was that they were there. There was a dispute as to whether or not they were locked up or whether or not they were a little more available to the men working. Testimony was that they were not furnished and I think Mr. Obad testified to the fact that one was never really offered to him, which isn't important.

What is important, I think, is that Michigan is very strong in holding that a failure to provide safety equipment is such a heinous thing in the realm of tort liability that Michigan even holds that you can't use Comparative Negligence where there is a failure to provide safety equipment. It is just almost absolute liability. I am not going to go that far in a case brought under the Federal Act, but it appeared to me clearly then and now that the decision of the jury was against the great weight of the evidence in regard to the negligence of the defendant. And it appeared to me then and it appears to me now that as evidence which not only they should have—could have but should have found that there was some negligence on the part of the defendant as a matter of law. And I would, therefore, deny the Motion for Rehearing."

Questionnaire to Jurors

1. Was the Defendant shipowner either negligent or was there unseaworthiness of the vessel?

Yes____ No_X_

2. If the answer to #1 is yes, was the negligence of the shipowner or the unseaworthiness of the vessel, or both, a contributing cause of his injury?

Yes____ No_X_

3. What is the total amount of all of the damages of the Plaintiff?

$ 0

4. Was the Plaintiff negligent?

Yes_X_ No____

5. Did the Plaintiff's negligence contribute to his injuries?

Yes_X_ No____

6. If Plaintiff was negligent, then what percentage of his negligence is attributed to the cause of his injuries?

100%

Synopsis of Evidence

Petitioner concedes that there was evidence to support the factual conclusions of the Michigan Court of Appeals. However there was also evidence upon which the jury could find the following facts:

1. That the ship had been inspected and approved as to necessary safety equipment by the United States Coast Guard; (Capt. Buswell, Tr. 7/17/70, pp. 317-322; Ex. 19);

2. That the work area was well lighted; (Respondent Obad, Tr. 7/17/79, pp. 547-548; Mate Schneider, deposition 6/19/75, p. 25; [Mate Schneider's deposition was videotaped and shown to the jury on 7/18/79], Bos'n Ditzel, Tr. 7/18/79, p. 450);

3. That the vessel was equipped with a workable safety cut-off switch to instantly stop the equipment in the event of mishap (Capt. Buswell, Tr. 7/17/79, p. 323; Bos'n Ditzel, Tr. 7/18/79, p. 448);

4. That the safety cut-off switch was in the hands of a competent experienced Bos'n who was observing the Respondent at work (Capt. Buswell, Tr. 7/16/79, pp. 249, 324; Mate Schneider, deposition 6/19/79; pp. 10-12; Bos'n Ditzel, Tr. 7/18/79, pp. 440-444, 448);

5. That the Respondent was an experienced man who had worked in the hold of the vessel on prior occasions on similar cargos (Respondent Obad, Tr. 7/11/79, pp. 72, 76-77, 110; Mate Schneider, deposition 6/19/79, pp. 57, 58, 59);

6. That the job was part of Respondent's regular duties (Capt. Buswell, Tr. 7/17/79, p. 403; Mate Schneider, deposition 6/19/79, pg. 8);

7. That safety harnesses were aboard the vessel in good condition and available for Respondent's use (Capt.

Buswell, Tr. 7/17/79, p. 323; Mate Schneider, deposition 6/19/79, pp. 9, 14, 32, 60; Bos'n Ditzel, Tr. 7/18/79, p. 446);

8. That the Respondent had been instructed as to his duties and specifically told never to stand under an accumulation of coal stuck in the cargo hold (Respondent Obad, Tr. 7/11/79, p. 120; Capt. Buswell, Tr. 7/12/79, p. 202; Tr. 7/16/79, p. 262; Bos'n Ditzel, Tr. 7/18/79, pp. 445, 458, 486);

9. That the Respondent had been advised to always wear a safety harness while working in the hold (Capt. Buswell, Tr. 7/12/79, p. 209; Bos'n Ditzel Tr. 7/18/79, pp. 446; 447; 487; 490);

10. That the Respondent was not working under preemptory orders at the time of his accident but had entered the hold without a harness of his own volition and was proceeding with the work at hand in his own way (Bos'n Ditzel, Tr. 7/18/79, pp. 448, 449);

11. That the Respondent was under constant surveillance and that the Bos'n's use of the safety cut-off switch was reasonable under the circumstances (Capt. Ditzel, Tr. 7/18/79, pp. 459, 475, 476, 504);

12. That despite general safety rules and specific warnings, Respondent elected to attempt to break loose a large column of coal stuck in the corner of a cargo hold by kicking at the bottom of it with his feet while standing directly below the mass of coal and in its path should it break loose (Capt. Buswell, Tr. 7/12/79, p. 234; Tr. 7/16/79, p. 247; Bos'n Ditzel, Tr. 7/18/79, pp. 456-459; 476; 490).

Constitution of the United States
Article III, Section 2, Clause 1

CLAUSE 1: Jurisdiction of Courts

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; *** —to all Cases of admiralty and maritime Jurisdiction; ***

Constitution of the United States
Seventh Amendment

AMENDMENT VII: Civil Trials

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Statute—45 U.S.C. §51

45 U.S.C. §51: Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; definition of employees

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purpose of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

Statute—46 U.S.C. §688

46 U.S.C. §688: Recovery for injury to or death of seaman

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.